

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Zaryl G. Bush,

Petitioner,

v.

Warden Brigham Sloan,

Respondent

Case No. 4:18-CV-864

ORDER

This is a state prisoner habeas corpus proceeding under 28 U.S.C. § 2254. Pending, following Magistrate Judge William H. Baughman, Jr.'s filing of his Report & Recommendation (Doc. 12), are the petitioner's motion to stay (Doc. 14), the respondent's opposition thereto (Doc. 15), and the petitioner's objection to the Report & Recommendation. (Doc. 13).

For the reasons that follow, overruled, the petitioner's objection, adopt the Report & Recommendation as this court's order, deny the motion to stay, and deny a certificate of appealability.

Petitioner pled guilty to charges, *inter alia*, of murder. In a decision that completed the state court proceedings, the state appellate court affirmed the conviction. That, in turn, began the running of the one-year Anti-Terrorism and Effective Death Penalty Act, 28 U.S.C. § 2254(d), limitations period for filing the instant petition.

Petitioner waited 397 days before filing the pending petition.

He seeks to avoid the time bar by arguing that newly discovered evidence establishes his actual innocence. While the Sixth Circuit has accepted that proposition as a basis for equitable

tolling of the AEDA bar, *Souter v. Jones* 395 F.3d 577, 589-90 (6th Cir. 2005), Magistrate Judge Baughman found that petitioner had failed to explain why he had not uncovered that “new” evidence within the otherwise mandatory one-year period. Petitioner’s objection, rather than offering any explanation for his delay, simply – and in conclusory generalities – asserts that he has eyewitness evidence that he did not strike the blow that caused the victim’s death.

Magistrate Judge Baughman’s finding that, given petitioner’s lack of explanation for his delay, the time bar precludes consideration of the merits was entirely correct. Petitioner having left the reasons for taking so long unexpressed, there is no merit to his objection.

That being so, it is not necessary to grant the petitioner’s motion to stay.

It is, accordingly, hereby

ORDERED THAT petitioner’s objection (Doc. 13) to the Magistrate Judge’s Report & Recommendation (Doc. 12) be, and the same hereby is overruled; the Report & Recommendation is adopted as this court’s order; and the petitioner’s motion for a stay (Doc. 14) is overruled.

No certificate of appealability shall issue as jurists of reason could not reasonably dispute the foregoing result or its rationale.

So ordered.

/s/ James G. Carr

Sr. U.S. District Judge